

1 Cam Ferenbach, NV Bar No. 96
cferenbach@lionelsawyer.com
2 Kirby J. Smith, NV Bar No. 414
ksmith@lionelsawyer.com
3 Ketan D. Bhirud, NV Bar No. 10515
LIONEL SAWYER & COLLINS
4 1700 Bank of America Plaza
300 South Fourth Street
5 Las Vegas, Nevada 89101
Telephone: (702) 383-8888
6 Facsimile: (702) 383-8845

7 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 MULTIBANK 2009-1 RES-ADC
VENTURE, LLC, a Delaware limited liability
11 company;

12 Plaintiff,

13 v.

14 DOUGLAS HARRISON, an individual;
WENDY R. HARRISON, an individual;
15 EDWARD C. BARAN, JR., an individual;
and KATHRYN A. BARAN, an individual;

16 Defendants.

Case No.: 2:10-CV-01722 -GMN-PAL

**EX PARTE MOTION TO FILE A
SUPPLEMENTAL OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
AND
SUPPLEMENTAL OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

17
18 Multibank 2009-1 RES-ADC Venture, LLC ("Plaintiff"), pursuant to Local Rules 6-2
19 and 7-5, move this Court ex parte for an order permitting Plaintiff to file the Supplemental
20 Opposition to Defendants' Motion to Dismiss, attached hereto as Exhibit 1. This Supplemental
21 Opposition with attached exhibits is necessary to address defendants' introduction of new facts
22 and a new affidavit regarding the issue of personal service on Wendy Harrison.

23 On March 12, 2011, defendants filed the Motion to Dismiss (Docket #12). The motion
24 was based on the alleged failure to serve defendants within 120 days. Plaintiff argued in its
25 opposition (Docket #15) it made diligent attempts to serve defendants before and after the 120
26 day period and was able to serve defendants shortly after the 120-day service period, including
27 personal service upon Wendy Harrison on February 13, 2011. Wendy Harrison now disputes she
was personally served on February 13, 2011, attaching an affidavit to this effect. Specifically, in

1 Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss (Docket #16), defendants use
 2 this affidavit to question Plaintiff's good faith by questioning the veracity of Plaintiff's second
 3 process server, Dawn Weislek, calling her service affidavit "patently false and in making them,
 4 Ms. Weislek has committed perjury."

5 The process server in turn has reviewed Mrs. Harrison's affidavit and her own records
 6 and concludes that Mrs. Harrison has perjured herself to this Court. As Plaintiff does not in the
 7 ordinary course have the right to respond to the perjurious statements of defendant Wendy
 8 Harrison because they are attached to the Reply brief, Plaintiff requests this opportunity to file
 9 this Supplemental Opposition at this time to set the record straight.

10 Ms. Weislek, the licensed process server, states under oath she handed a copy of the
 11 summons and complaint directly to Wendy Harrison on February 13, 2011, and Wendy
 12 Harrison's statements to this Court to the contrary are "false and untrue." See affidavit of Dawn
 13 Weislek, attached to the Supplemental Opposition as Exhibit 1, paragraphs 7 and 8. Using a
 14 photograph of Mrs. Harrison, Ms. Weislek identifies Mrs. Harrison as the woman who she
 15 served on February 13, 2011. Furthermore, Ms. Weislek explains why she returned to Mrs.
 16 Harrison's home on February 23, 2011, as reported by the security guard. Specifically, Ms.
 17 Weislek was there to attempt to serve a summons and complaint in a different, Arizona lawsuit; a
 18 visit unrelated to the instant lawsuit. *Id.*, paragraph 9.

19 Plaintiff's Supplemental Opposition principally addresses Wendy Harrison's affidavit and
 20 the new facts contained therein. Plaintiff requests an Order permitting Plaintiff to file the

21 //

22 /

23 //

24 //

25 //

26 //

27 //

Supplemental Opposition attached as Exhibit 1 hereto.

DATED this 5 of May, 2011.

Respectfully submitted by:

LIONEL SAWYER & COLLINS

By: 

Cam Ferenbach, NV Bar No. 96

Kirby J. Smith, NV Bar No. 414

Ketan D. Bhirud, NV Bar No. 10515

LIONEL SAWYER & COLLINS

300 South Fourth Street #1700

Las Vegas, Nevada 89101

Attorneys for Plaintiff

ORDER

IT IS HEREBY ORDERED that Plaintiff shall file as a separate document on CM/ECF, its Supplemental Opposition to Defendants' Motion to Dismiss.

DATED this 6th day of May, 2011.



Gloria M. Navarro
United States District Judge